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In The Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-466

WILLIAM E. ARNOLD COMPANY,
a Florida corporation,

Petitioner,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT BUSINESS REPRESENTATIVE THEREOF,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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In The
Supreme Court of the United States

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No. _____

WILLIAM E. ARNOLD COMPANY,
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CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH JOHN H. SEA, BUSINESS REPRESENTATIVE THEREOF; AND CARPENTERS LOCAL UNION NO. 627, A LABOR ORGANIZATION, AND AS AN UNINCORPORATED ASSOCIATION, BY AND THROUGH EARL S. HUFF, ASSISTANT BUSINESS REPRESENTATIVE THEREOF,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

Petitioner prays that a Writ of Certiorari issue to review the judgment and opinion of the Supreme Court of Florida dated April 18, 1973.

CITATIONS TO OPINIONS BELOW

The opinion of the Supreme Court of Florida is reported at 279 So.2d 300 and is printed in the Appendix at p. 8a. The opinion of the District Court of Appeal of Florida, First District, is reported at 248 So.2d 179 (1st DCA Fla. 1971) and is printed in the Appendix at p. 3a. The Supreme Court of Florida's Order denying a timely Petition for Rehearing was entered on July 20, 1973, and is printed in the Appendix at p. 15a.

JURISDICTION

The judgment of the Supreme Court of Florida was entered on April 18, 1973. A timely Petition for Rehearing was denied on July 20, 1973. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§1257(3), 2101(c).

QUESTION PRESENTED FOR REVIEW

Whether the state courts have jurisdiction to enjoin the breach of a no-strike clause contained in a collective bargaining agreement where the breach arguably involves an unfair labor practice.

CONSTITUTIONAL PROVISION INVOLVED

Article VI, Clause 2:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law

of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary, notwithstanding."

STATUTES INVOLVED

1. Section 203(d) of the National Labor Relations Act, as amended, 29 U.S.C. §173(d):

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes over the application or interpretation of an existing collective-bargaining agreement. . . ."

2. Section 301(a) of the National Labor Relations Act as amended, 29 U.S.C. §185(a):

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

STATEMENT OF THE CASE

The William E. Arnold Company is an "employer" within the meaning of §152(2) of the National Labor Relations Act, as amended (hereinafter referred to as the "Act"). The Carpenters District Council of Jacksonville and Vicinity and Carpenters Local Union No. 627 are labor organizations within

the meaning of §152(5) of the Act. The William E. Arnold Company originally brought suit under §301 of the Act in the Fourth Judicial Circuit Court in and for Duval County, Florida, seeking an injunction prohibiting the unions from violating a "no-strike" provision contained in a collective bargaining agreement entered into by the unions and the William E. Arnold Company. The no-strike provision in question read as follows:

Article VI

> "There shall be no work stoppage, slowdown, work cessation or strike because of a jurisdictional dispute. A mutually agreeable settlement, or joint decision of the international unions involved, or decision or interpretation of the National Joint Board for Settlement of Jurisdictional Disputes (or Hearing Panel) shall be binding and all parties agree to accept such decision or interpretation."

On April 23, 1971, a temporary restraining order was issued by the Honorable Roger J. Waybright, Circuit Judge in and for Duval County, Florida, prohibiting further breaches of the no-strike promise contained in the collective bargaining agreement.[1/] The unions then filed a Writ of Prohibition with the District Court of Appeal of Florida, First District, alleging that since the contract violation was also an unfair labor practice under the Act, 29 U.S.C. §158(b)(4)(i)(D), the Circuit Court of Duval County had no jurisdiction to remedy the contract breach. The Florida District Court of Appeal, in a decision rendered on May 10, 1971, upheld the Duval County Circuit Court's assumption of jurisdiction and denied

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1/ A true copy of the trial court's Order has been reproduced in the Appendix at p. 1a.

the unions' suggestion for Writ of Prohibition. *See* 248 So.2d 179 (1st DCA Fla. 1971); Appendix at p. 3a.

The unions then filed a Petition for Writ of Certiorari with the Supreme Court of Florida. Certiorari was granted and the Supreme Court of Florida entered its opinion and judgment on April 18, 1973, vacating the decision of the Florida District Court of Appeal. In its opinion, the Supreme Court of Florida held that since the unions' contract breach arguably involved an unfair labor practice, that the National Labor Relations Board had exclusive jurisdiction and the state courts had been preempted of their jurisdiction to enjoin the contract breach. 279 So.2d 300, Appendix at p. 8a.

The William E. Arnold Company, thereafter, timely filed a Petition for Rehearing with the Supreme Court of Florida in which it was alleged that the Court below apparently overlooked or failed to consider prior decisions of both this Court and the National Labor Relations Board which had expressly rejected the claim of preemption where a contract breach also arguably involved an unfair labor practice. *See Smith v. Evening News Association*, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed. 2d 246 (1962); *Collyer Insulated Wire*, 192 NLRB No. 150, 77 LRRM 1931 (1971). Various local chapters of the Associated General Contractors of America, the Florida State Chamber of Commerce, and numerous other employers having collective bargaining agreements in the State of Florida, filed amicus curiae briefs in support of the Petition for Rehearing. On July 20, 1973, in a 4 to 3 decision, the Supreme Court of Florida denied the Petition for Rehearing. Appendix at p. 15a.

REASONS FOR GRANTING THE WRIT

The opinion of the Court below violates the Supremacy Clause of the Constitution because it frustrates the national labor policy governing the collective bargaining process, grievance-arbitration enforcement and uniformity in substantive labor law between state and federal courts.

A. THE OPINION OF THE COURT BELOW CONFLICTS WITH AND UNDERMINES THE NATIONAL LABOR POLICY PREVIOUSLY ESTABLISHED BY THIS COURT IN *SMITH V. EVENING NEWS ASSOCIATION*, 371 U.S. 195 (1962).

It is well settled that both the state and federal courts have jurisdiction over actions to enforce collective bargaining agreements. *See e.g. Charles Dowd Box Company v. Courtney*, 368 U.S. 502, 82 S.Ct. 519, 7 L.Ed.2d 483 (1962). In such cases, state law may be applied only to the extent that it is compatible with the purpose of §301(a) of the Act, and where state law is applied, it is absorbed into federal law. *See Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957). In essence, state courts enforcing collective bargaining agreements must apply federal substantive law under §301 of the Act. *Textile Workers Union v. Lincoln Mills, supra; Charles Dowd Box Company v. Courtney, supra; Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 82 S.Ct. 571, 7 L.Ed.2d 593 (1962); U.S. Const. Article VI, Clause 2.

In the case at bar, the Court below was faced with the question of whether a state court loses its jurisdiction to enforce a collective bargaining agreement where the alleged breach of the agreement also involves an unfair labor practice. This same question was posed before the Supreme Court

of Michigan in *Smith v. Evening News Association*, 106 N.W. 2d 785, 362 Mich. 350 (Mich. 1961). In the *Smith* case, *supra*, the Supreme Court of Michigan affirmed a Michigan circuit court's dismissal of an action to enforce a collective bargaining agreement, holding that where the contract breach also involved an unfair labor practice the subject matter of the suit was within the exclusive jurisdiction of the National Labor Relations Board (hereinafter referred to as "NLRB"). The Michigan Supreme Court observed in the *Smith* case, *supra*, that the key issue before the court was whether the employer's alleged breach of contract was also an unfair labor practice.

On certiorari, the Supreme Court of the United States *reversed* the Michigan state court, holding that the suit filed in the Michigan circuit court actually arose under §301 of the Act and that the jurisdiction of the state courts of Michigan to enforce the collective bargaining agreement was not preempted by the NLRB. *Smith v. Evening News Association*, 371 U.S. 195. In so holding, this Court in the *Smith* case, *supra*, stated:

> *"The authority of the Board [NLRB] to deal with an unfair labor practice which also violates a collective bargaining contract* is not displaced by §301, but *it is not exclusive and does not destroy the jurisdiction of the courts in suits under §301."* (Emphasis added.) 371 U.S. at 197.[2/]

In direct contradiction of the above holding of this Court, the Court below held in the case *sub judice* that state court

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2/ See also the text of "Arbitration And/Or the NLRB," a speech given by former NLRB Chairman Frank W. McCulloch February 1, 1963, wherein he discussed the application of the *Smith* case, *supra*, at 52 LRRM 92.

jurisdiction to enforce a collective bargaining agreement is preempted by the NLRB where federally prohibited practices are involved.

> *"It is unquestionable that state courts do have jurisdiction to enforce a collective bargaining agreement and to enjoin a strike in violation of a 'no-strike' clause* contained therein, *but not when the strike is also arguably an unfair labor practice* prohibited by federal law. . . . *The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a breach of contract."* (Emphasis supplied.) Florida Supreme Court Opinion at 279 So.2d 302; Appendix at p. 10a.

The national labor policy previously established by this Court in *Smith v. Evening News*, and *Dowd Box*, was reaffirmed in *Amalgamated Association of Street, Electric Railway and Motor Coach Employees v. Lockridge*, 403 U.S. 274, 91 S.Ct. 1909, 29 L.Ed.2d 473 (1971) where the Court noted:

> "In Section 301 of the Taft-Hartley Act, Congress authorized federal courts to exercise jurisdiction over *suits to enforce collective bargaining agreements.* We have held that *such actions are judicially cognizable, even where the conduct alleged was arguably protected or prohibited by the National Labor Relations Act because the history of the enactment of Section 301 reveals that 'Congress deliberately chose to leave the enforcement of collective agreements to the usual processes of law.' Charles Dowd Box Company v. Courtney*, 368 U.S. 502, 513, 49 LRRM 2619 (1962). *It is firmly established, further, that state courts retain concurrent jurisdiction to adjudicate such claims, Charles Dowd Box Company, supra,* and that individual employees have

standing to protect rights conferred upon them by such agreements, *Smith v. Evening News, supra; Humphrey v. Moore*, 375 U.S. 335." (Emphasis supplied.) *Id.* at 403 U.S. 298.

Prior decisions of this Court have made it abundantly clear that state court jurisdiction over actions involving the breach of a collective bargaining agreement, even though the breach arguably may involve an unfair labor practice, has not been preempted by the National Labor Relations Board. The decision of the Court below patently conflicts with and undermines the expressed pronouncements of this Court.

B. THE COLLECTIVE BARGAINING PROCESS IS THE PREFERRED METHOD FOR SETTLEMENT OF GRIEVANCE DISPUTES OVER THE APPLICATION OR INTERPRETATION OF AN EXISTING COLLECTIVE BARGAINING AGREEMENT.

The ultimate effect of the Supreme Court of Florida's decision is to undermine the national labor policy by denying parties to collective bargaining agreements access to the state court system for enforcing their agreements. The no-strike promise on the part of the union is the *quid pro quo* for the grievance arbitration machinery in the collective bargaining process. *Textile Workers v. Lincoln Mills, supra.* In the Court's opinion below, the no-strike promise, which lies at the very heart of industrial peace, is rendered meaningless and unenforceable in the Florida state courts. If the opinion below is allowed to stand, industrial warfare may very well take the place of grievance-arbitration procedures. Such a result would fly in the face of the national labor policy which this Court, the Congress and the National Labor Relations Board have adopted. *E.g. Boys Markets, Inc. v. Retail Clerks*, 398 U.S.

235, 90 S.Ct. 1583, 26 L.Ed.2d 199 (1970); 29 U.S.C. §173(d); *Collyer Insulated Wire*, 192 NLRB No. 150 (1971).

In enacting Section 301 of the Act, Congress did more than confer jurisdiction in the federal courts over labor organizations. It expressed a national policy that collective bargaining agreements should be enforced by the courts on behalf of or against labor organizations. *Textile Workers v. Lincoln Mills, supra.* Enforcement of this national labor policy will promote a higher degree of responsibility upon the parties to collective bargaining agreements and will thereby promote industrial peace. The decision of the state court below can only serve to undermine the national labor policy and will have a crippling effect on grievance-arbitration. *Cf. Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960).

The National Labor Relations Board has expressly recognized that it has *concurrent* jurisdiction with the courts over actions concerning the breach of a collective bargaining agreement which also arguably involve an unfair labor practice. *Collyer Insulated Wire, supra.* The National Labor Relations Board has adopted a policy in which it will initially defer its jurisdiction over collective bargaining agreement disputes to the procedure agreed upon by the parties in their collective bargaining agreement. This policy of deferring jurisdiction is consistent with the national labor policy established by Congress in §203(d) of the Act, to wit:

> "Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes over the application or interpretation of an existing collective-bargaining agreement. . . ."

In the case at bar the parties have expressly agreed in their collective bargaining agreement that jurisdictional disputes are to be settled peaceably and without resort to strike. Although the expressed contract intent of the parties is the preferred method for settling labor disputes under our national labor policy, that method has been undercut by the decision of the Court below.

C. THE OPINION OF THE COURT BELOW IS IN DIRECT CONFLICT WITH THE FEDERAL POLICY OF LABOR LAW UNIFORMITY BETWEEN FEDERAL AND STATE COURTS ESTABLISHED BY THIS COURT IN *BOYS MARKETS, INC. V. RETAIL CLERKS*, 398 U.S. 235 (1970).

The Court below has ruled that state court injunctive relief in the grievance-arbitration context of the collective bargaining process will not be available to either employers or unions whenever the breach sought to be enjoined arguably involves an unfair labor practice.[3/] The rationale of this decision will engender rampant forum shopping and maneuvering from one court to another and destroy relative uniformity in the enforcement of arbitration agreements. This is precisely the situation which this Court sought to remedy in *Boys Markets, Inc. v. Retail Clerks, supra*, where the Court pointed out that injunctive relief to enforce a no-strike obligation should be available in *both* state and federal courts:

> ". . . The injunction, however, is so important a remedial device, particularly in the arbitration context, that its availability or nonavailability in various courts

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3/ It is highly probable that every breach of a collective bargaining agreement may "arguably involve an unfair labor practice." *See* §§8(a)(5), 8(b)(3), 8(d) of the Act; *Collyer Insulated Wire, supra.*

> will not only produce rampant forum shopping and maneuvering from one court to another, but will also greatly frustrate any relative uniformity in the enforcement of arbitration agreements." 398 U.S. at p. 246.

The national policy of labor law uniformity[4/] between federal and state courts and the criteria governing the availability of equitable remedies to enforce arbitration agreements and no-strike obligations has been destroyed by the decision of the Court below. Our national labor policy is directed toward the goal of settling disputes by an agreed upon peaceful method, 29 U.S.C. §173(d). The nonavailability of injunctive relief in the Florida state courts renders the potentially peaceful arbitration process meaningless and ineffectual.

4/ *Also see Teamsters Local 174 v. Lucas Flour Co., supra.*

CONCLUSION

The decision of the Court below flies in the face of national labor policy governing the collective bargaining process, grievance-arbitration enforcement and uniformity in substantive labor law between state and federal courts. For these and the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

COFFMAN & JONES
Post Office Box 40089
Jacksonville, Florida 32203

Attorneys for Petitioner

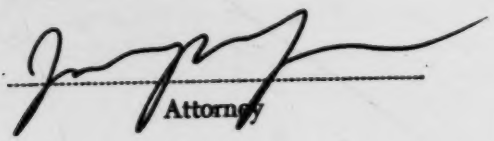
By J. P. Jones

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Petition for a Writ of Certiorari to the Supreme Court of Florida have been furnished by United States first class mail on this 10th day of September, 1973, to the following:

Mahon & Mahon
77 Washington Street
Jacksonville, Florida 32202

Attorneys for Respondents



Attorney

APPENDIX

IN THE
CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, IN AND FOR DUVAL COUNTY, FLORIDA

Case No. 71-3623 - Division B

WILLIAM E. ARNOLD COMPANY,
a Florida corporation,

Plaintiff,

v.

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Defendants.

ORDER

THIS CAUSE coming on to be heard on Plaintiff's sworn bill of Complaint and upon its application for a Temporary Restraining Order, and after telephoned notice a hearing having been held at which the Defendants' attorney was present and sworn testimony and other evidence was received, and it appearing that the injuries apprehended will be done if an immediate remedy is not afforded, and that, therefore, Plaintiff is entitled to a Temporary Restraining Order herein, it is therefore,

ORDERED, that pending further order of this Court herein:

The Defendants, and each of them and their officers, agents, members, servants, employees, attorneys, and representatives, and those persons in active concert or participation with them, and all persons having knowledge of the Court's Order, be immediately restrained and enjoined from:

(a) Causing, inducing, participating in or aiding any refusal to work for Plaintiff at the Jacksonville General Hospital, 4901 Richard Street, Jacksonville, Florida, in violation of Article VI of the collective bargaining Agreement between the parties dated May 1, 1968.

(b) Committing, doing, or uttering any act, word or deed, written, spoken or performed, singularly or in concert, which is intended, designed or calculated, to induce, persuade, order, cause or bring about any breach of Article VI of the aforesaid collective bargaining Agreement between Defendant Unions and Plaintiff, or which is intended, designed or calculated to induce, persuade, order, cause or bring about any work stoppage by or on the part of any person in violation of Article VI of the aforesaid Agreement.

(c) Taking any other action whatsoever for the purpose of causing any such breach of contract or work stoppages in violation of Article VI of said Agreement.

This Temporary Restraining Order shall become of full force and effect upon the Plaintiff giving bond as required by law in the sum of $5,000.00, and approved by the Court or its Clerk and upon the giving and approving of said bond, such approval to be endorsed hereon.

ORDERED IN Jacksonville, Duval County, Florida, this 23rd day of April, 1971.

/s/ Roger J. Waybright
Judge

IN THE
DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

JANUARY TERM, A. D. 1971.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED.

Case No. P-196

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Relators,

v.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondent.

Opinion Filed May 10, 1971.

A Suggestion for Writ of Prohibition. Original Jurisdiction.

Lacy Mahon, Jr. of Mahon & Mahon, for Relators.

Coffman & Jones, for Respondent.

SPECTOR, J.

Relators have filed a suggestion for writ of prohibition to restrain the respondent circuit judge from exercising any

further jurisdiction respecting an action presently pending before the respondent judge on the ground that the subject matter of the said pending action is outside the jurisdiction of the respondent judge. We have examined allegations of the suggestion herein, together with the applicable principles of law advanced by respective counsel in their briefs and arguments, and hold that the respondent is not without jurisdiction in the premises. Accordingly, the suggestion for writ of prohibition is denied.

In the action pending before the respondent, a temporary restraining order was entered against relators in a suit filed against them by a general contractor to enjoin relators from violating a "no-strike" provision of a collective bargaining agreement entered into between the contractor and the relators. The contractor alleged in its suit for injunction that the relators went on strike in violation of the "no-strike" clause of their collective bargaining agreement because of a jurisdictional dispute between relators and a subcontractor and another union.

Relators contend here that the respondent had no jurisdiction since their strike was over conduct constituting an unfair labor practice under Title 29, Labor, §158(b)(4)(i)(D), United States Code Annotated, and thus is within the exclusive jurisdiction of the National Labor Relations Board. We do not quarrel with relators' contention that the conduct they complain of and which prompted their strike relates to an unfair labor practice within the cited law. But, the question before us in this proceeding is whether a state court has jurisdiction to restrain the breach of a "no-strike" clause in a collective bargaining agreement where said agreement expressly specifies a method for resolving jurisdictional disputes. In a prohibition action, we are not concerned with the

correctness of the trial court's ruling – only with the power or authority to assume jurisdiction.

Relators rely on Sheetmetal Workers Int. Ass'n. v. Florida Heat and Power, Inc., 230 So.2d 154 (Fla. 1970), for the proposition that Florida state courts have no jurisdiction to enjoin union activities, including the strike herein, which arguably comes within the jurisdiction of the National Labor Relations Board. Also relied upon is Scherer & Sons, Inc. v. International Ladies Garment Workers Union Local 415, 142 So.2d 290 (Fla. 1962). The Sheetmetal Workers case is factually distinguishable from the case at bar. There, no collective bargaining agreement existed between the parties which contained a "no-strike" clause. Here, there is such an agreement. In Sheetmetal Workers, there being no contract, the parties had not agreed to arbitrate their differences as to jurisdictional disputes before the National Joint Board for Settlement of Jurisdictional Disputes. In the case at bar, the parties had agreed to resort to that forum for settlement of such disputes. The Scherer case, supra, is equally inapplicable. That was a suit to enjoin alleged restraint of trade practices by the defendant union under Chapter 542, Florida Statutes. The court held that the union's activities there constituted unfair labor practices under the federal labor laws and were therefore within the jurisdiction of the National Labor Relations Board and not the state court's jurisdiction. As in the Sheetmetal Workers case, however, the parties to the action had not entered into a binding agreement whereunder they had agreed to submit their grievances to a designated forum as is the case herein.

We think the question raised by relators is answered adversely to them in Radio Corporation of America v. Local 780 International Alliance of Theatrical Employees, AFL-CIO, 160 So.2d 150 (Fla. App. 1964). In that case, the employer, Radio

Corporation of America, brought an action in the state court to enforce a no-strike, no-picketing provision of a collective bargaining agreement. On appeal from the trial court's ultimate ruling dissolving an earlier temporary restraining order, the appellate court was confronted directly with the question of whether a state court had authority to grant an injunction against a violation of a no-strike provision of a collective bargaining agreement. The court, following decisions in New York and California, Perry v. Robilotto, 240 N.Y.S. 2d 331 (S. Ct. 1963), and Gage Plumbing Supply v. Local 300, International Hod Carriers Union, 202 Cal.App.2d 197 (1962), held that state courts do have the authority to enjoin violations or breaches of no-strike provisions of collective bargaining agreements. In RCA, supra, the court rejected the union's contention that jurisdiction in labor matters of this type were pre-empted by the federal law. The relators herein advance similar contentions as those rejected by the court in RCA, buttressed however by our Supreme Court's decision in the Sheetmetal Workers case, supra.

Relators' argument that the jurisdictional dispute which has arisen between their unions and the contractors and the competing union is properly justiciable by the National Labor Relations Board and not the state courts seems also to be refuted by a decision of the National Labor Relations Board in Laborer's Local 670, 189 NLRB No. 98, 76 LRRM 1794 (April 12, 1971), holding that where the parties have arrived on a method for voluntary adjustment of a union's claim to disputed work to be bound by procedures of the National Joint Board for Settlement of Jurisdictional Disputes, the parties are required to resolve jurisdictional disputes through joint board procedures. As noted above, the collective bargaining agreement in the case sub judice contains a similar provision for resolving jurisdictional disputes through Joint Board procedures.

A recent decision of the United States Supreme Court, Boys Markets v. Retail Clerks Union, 398 U.S. 235, 26 L.Ed.2d 199, 90 S. Ct. 1583, makes it clear that the state and federal courts have concurrent jurisdiction to enforce no-strike provisions contained in collective bargaining agreements, notwithstanding the provisions of Section 301(a) of the Labor Management Relations Act of 1947. However, the court recognized in the Boys Market case that when suits are filed in state courts to enforce no-strike clauses, such suits may be removed to federal district courts pursuant to 28 U.S.C., Section 1441. In Boys Market, the court held at 398 U.S. 254 as follows:

> ". . . When a strike is sought to be enjoined because it is over a grievance which both parties are contractually bound to arbitrate, the District Court may issue no injunctive order until it first holds that the contract *does* have that effect; and the employer should be ordered to arbitrate, as a condition of his obtaining an injunction against the strike. . . ."

The foregoing authorities make it amply clear that state courts do have concurrent jurisdiction to enforce a no-strike clause in a collective bargaining agreement. While we so hold, thus requiring denial of relators' suggestion for a writ of prohibition, we do not necessarily hold that the temporary restraining order entered in the case pending before the respondent is free from error by reason of the court's failure to include therein an order directing the plaintiff-employer and the relator-union to arbitrate or submit their grievances to the joint board for expeditious resolution. While the failure to so direct may affect the correctness of the temporary restraining order, that is a matter not going to the jurisdiction of the respondent court. Rather, it is a matter which is sub-

ject to being reviewed by interlocutory appeal in this court or on review from final judgment in the event the parties should elect to litigate further in the lower court.

CARROLL, Donald, ACTING CHIEF JUDGE; and WIGGINTON, J., CONCUR.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1973

Case No. 41,199

CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, a labor organization, and as an unincorporated association, by and through JOHN H. SEA, business representative thereof; and CARPENTERS LOCAL UNION NO. 627, a labor organization, and as an unincorporated association, by and through EARL S. HUFF, assistant business representative thereof,

Petitioners,

v.

THE HONORABLE ROGER J. WAYBRIGHT, as Circuit Judge of the Fourth Judicial Circuit, in and for Duval County, Florida,

Respondent.

Opinion filed April 18, 1973

Writ of Certiorari to the District Court of Appeal, First District

Lacy Mahon, Jr. of Mahon and Mahon, for Petitioners

Daniel R. Coffman, Jr. of Coffman and Jones, for Respondent

McCAIN, J.

By petition for writ of certiorari we have for review a decision of the District Court of Appeal, First District, reported at 248 So. 2d 179, which conflicts with Sheetmetal Workers' International Association, Local Union No. 223 v. Florida Heat and Power, Inc., 230 So. 2d 154 (Fla. 1970). We have jurisdiction pursuant to Fla. Const., Article V, §3(b)(3).

The William E. Arnold Company, a general contractor, filed suit against petitioners in the Circuit Court of Duval County, to enjoin them from violating a "no-strike" provision of a collective bargaining agreement entered into between the contractor and petitioners. The Circuit Court, Judge Waybright presiding, agreed with the contentions of the contractor and entered a temporary restraining order against petitioners.

Petitioners sought prohibition in the District Court of Appeal, First District, arguing that the Circuit Court had no jurisdiction since the strike constituted an unfair labor practice within the purview of Title 29, Labor, §158(b)(4)(i)(D), United States Code Annotated, and was thus within the exclusive jurisdiction of the National Labor Relations Board. Petitioners relied on *Sheetmetal Workers' International Asso-*

ciation v. Florida Heat and Power, Inc., supra, to support their argument.

In *Sheetmetal Workers'*, this Court held that state court jurisdiction to enjoin labor activities is pre-empted when federally-protected or prohibited practices are involved, and that these activities are within the exclusive jurisdiction of the National Labor Relations Board. Two exceptions were noted: where there is violence or where there is an affront to the state's right-to-work policy, state courts may enjoin even those activities which would otherwise be within the National Labor Relations Board's exclusive jurisdiction. We also held that if a case is arguably subject to exclusive National Labor Relations Board jurisdiction, the Board, and not the state court, must initially determine its jurisdiction. In *Sheetmetal Workers'* the labor activities enjoined were arguably federally-prohibited unfair labor practices, and the case did not fall within the exceptions noted to the above-stated rules. We held, therefore, that our state courts did not have jurisdiction to enjoin the activities.

In the case at bar, the First District Court denied the suggestion for writ of prohibition, distinguishing *Sheetmetal Workers'* on the basis that it did not involve a collective bargaining agreement which contained a "no-strike" clause. In our judgment, this is not a sufficient basis for departing from the rationale and decision in Sheetmetal Workers'.

It is unquestionable that state courts do have jurisdiction to enforce a collective bargaining agreement and to enjoin a strike in violation of a "no-strike" clause contained therein, but not when the strike is also arguably an unfair labor practice prohibited by federal law. In Radio Corporation of America v. Local 780 International Alliance of Theatrical Employees, AFL-CIO, 160 So. 2d 150 (Fla. App. 2d, 1964),

relied on by the District Court, there was no allegation that the strike enjoined constituted an unfair labor practice as well as a breach of contract. In Boys Market v. Retail Clerks Union, 398 U.S. 235 (1970), also cited by the District Court, there was likewise no unfair labor practice involved. It is these cases which should have been distinguished from the case at bar, not *Sheetmetal Workers'*. The decisive issue is whether or not the activity enjoined is arguably an unfair labor practice, not whether it is also a breach of contract.

In cases such as this one, where the National Labor Relations Board has exclusive jurisdiction because of the unfair labor practice involved, the Board may decline to assume jurisdiction either by rule of decisions or by published rules adopted pursuant to the Administrative Procedure Act, after which state courts may then assume jurisdiction.[1] In our view, the National Labor Relations Board decision cited by the District Court,[2] does not have the effect of declining jurisdiction. In that case the Board held only that it cannot decide disputes over union jurisdiction when the parties have agreed to arbitrate those disputes. The case does not hold that the Board cannot or would not 1) order the parties to arbitrate as agreed, or 2) issue a cease and desist order against a federally prohibited strike arising out of the dispute.

Sub judice, since the strike enjoined by the Circuit Court appears to have been, at least arguably, a federally prohibited unfair labor practice, and since the National Labor Relations Board has not abdicated its exclusive jurisdiction in cases of this type, we hold that the rule of law enunciated in *Sheetmetal Workers'* applies and that the District Court

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1. Title 29, Labor, §164(c), United States Code Annotated.

2. Laborer's Local 670, 189 NLRB 98, 76 LRRM 1794 (April 12, 1971).

erred in failing to prohibit the further exercise of jurisdiction by the Circuit Court. Accordingly, the decision of the District Court of Appeal, First District, is vacated and the cause is remanded to that Court for further proceedings not inconsistent with the decision herein.

It is so ordered.

CARLTON, C.J., ERVIN, ADKINS and BOYD, JJ., Concur

DEKLE, J., Dissents with Opinion

DREW, J. (Retired) Dissents and Concurs with DEKLE, J.

DEKLE, J. — dissenting:

I would deny certiorari in these limited circumstances where both sides have previously contracted in their collective bargaining agreement to submit the jurisdictional dispute to binding arbitration. This effectively removes the otherwise exclusive jurisdiction in the National Labor Relations Board.

The present cleavage is one step beyond the earlier stage of initial exclusiveness in N.L.R.B. on an alleged unfair practice. At today's stage it has become a matter of compliance with the parties' contract which both should honor; otherwise it becomes ineffectual. State courts historically determine contract matters. The parties here agreed to arbitrate this question so that, as to this point, they thereby chose not to utilize the N.L.R.B. This was their right.

The N.L.R.B. itself takes this view, contrary to our majority opinion which would send this jurisdictional dispute to that body first. The recent case of Local 423, Laborers and V & C Brickcleaning Co., 199 NLRB No. 48, BNA Daily Labor Report at Page A-3 (October 5, 1972), conclusively lays to rest the claim of preemption by petitioner here. In

that case, the National Labor Relations Board has held that it would *not* exercise jurisdiction over a jurisdictional dispute *where the parties involved agreed by contract* (as here) *to settle such disputes through a national joint board.* This is the same logic which I have endeavored to set forth above and comports with reason and applicable jurisdiction.[1]

In that cause the N.L.R.B. said that the Board cannot get into a dispute between the bricklayers and laborers, over who is to use certain equipment and do certain work regarding the brick at a construction site in Columbus, Ohio. The Board held as follows:

> "A majority of the panel holds that in view of the contract between V&C and Bricklayers, the parties have agreed to be bound by a decision of the Joint Board. The majority likewise finds that the Laborers, by signing the April 1970 agreement reconstituting the Joint Board, likewise agreed to be bound by Board determinations. . . .
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> "If we retained jurisdiction in this case, the statutory purpose to encourage the voluntary settlement of jurisdictional disputes would be frustrated in that a party receiving an adverse decision from the agreed-upon tribunal for settling its jurisdictional dispute would be encouraged to ignore such decision, lapse into noncompliance, and then come before this Board for a more favorable resolution to the dispute.
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> "[T]he thrust of Section 10(k) of the Taft Act is to forbid the Board to settle a jurisdictional dispute only

1. See 25 Vand. L.Rev. 1057, Oct. 1972, "Deference of Jurisd. by NLRB and the Arbitration Clause."

> upon a showing that there's an agreed-upon method for disposing of the case, not upon a further showing that the agreed-upon method will be expeditious."

It is, therefore, apparent that our own Court is in conflict with the Board which we say, contrary to that Board, has jurisdiction here. The authorities set forth in the scholarly DCA opinion of Spector, J., also support this conclusion.

I would agree with the reasoning of the Board and of the District Court of Appeal and deny prohibition, letting the order of the able Chancellor stand for the matter to be determined under the parties' contract for arbitration. To do otherwise is to encourage needless and protracted litigation. To avoid such litigation and the ensuing delay is the purpose of arbitration and such contract provisions, to help unclog the busy courts and boards of this teeming land.

I respectfully dissent.

DREW, J. (Retired), Concurs

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JULY TERM, A. D. 1973

FRIDAY, JULY 20, 1973

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CARPENTERS DISTRICT COUNCIL OF JACKSONVILLE AND VICINITY, ETC, ET AL,

Petitioners,

vs.

THE HONORABLE ROGER J. WAYBRIGHT, Etc.,

Respondent.

On consideration of the petition for rehearing filed by attorneys for respondent, and response thereto,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

CARLTON, C.J., ERVIN, ADKINS and McCAIN, JJ., Concur
BOYD and DEKLE, JJ., and DREW (Retired) J., Dissent